

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:13-cr-00263-RJC

USA,)
)
 Plaintiff,) ORDER
)
)
 vs.)
)
)
 ROBERT CHAVIUS FLOYD (3),)
 Defendant.)

THIS MATTER is before the Court upon motion of the defendant pro se requesting that the Court modify its sentence. (Doc. No. 445).

The defendant seeks a reduction based on time he spent in county jail on allegedly relevant conduct to his federal sentence under USSG §5G1.3 and his participation in substance abuse treatment under 18 U.S.C. § 3621(e)(2)(B). (Id. at 1). The motion fails, however, to state any legal basis for altering the oral pronouncement of the sentence after the fourteen-day deadline in Fed. R. Crim. P. 35(a) had passed to seek correction of arithmetical, technical, or other clear error.¹ Therefore, the Court lacks jurisdiction to consider the defendant's request to modify his sentence. United States v. Shank, 395 F.3d 466, 470-471 (4th Cir. 2005). Additionally, § 3621(e)(2)(B) gives the Bureau of Prisons, not the Court, discretion to lower a sentence for successful completion of the Residential Drug Addiction

¹ The Court sentenced the defendant on March 2, 2015, but the motion is dated June 28, 2018.

Program. Pelissero v. Thompson, 170 F.3d 442, 444 (4th Cir. 1999). If a defendant is not given the sentencing credit he thinks he deserves, his recourse is first to seek an administrative remedy, 28 C.F.R. § 542.10, and after that to file a petition under 28 U.S.C. § 2241 in the district of confinement.² Id.

IT IS, THEREFORE, ORDERED that the defendant's motion (Doc. No. 445) is **DISMISSED**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, and the United States Attorney.

Signed: August 15, 2018



Robert J. Conrad, Jr.
United States District Judge


² The defendant is incarcerated at FCI McDowell in Welch, West Virginia. (Doc. No. 445: Motion at 1).